

DETAILED ACTION

Claim 1-23 are pending.

This office action is in response to the amendment filed on July 13, 2011.

Claims 1-23 are examined.:

Response to Arguments

Applicant's arguments filed July 13, 2011, have been fully considered but they are not persuasive.

Examiner formally withdraws the objection to the specification and the claims in the previous office action of April 14, 2011. Also, Examiner formally withdraws the rejection under 25 USC 112, (April 14, 2011), but maintains the rejections under 35 USC 101.

Based on the newest amendment of July 13, 2011, see new office action below:

The applicants argued that Claims (independent) 1, 7 and 9 are directed to patentable subject matter. Examiner disagrees for the reasons which are maintained in the rejection below:

Specification

The specification is objected to for failing to provide proper antecedent basis for the claimed subject matter of Claims 7-18. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o).

Claims 7-18 of the originally filed specification recites, **“a data storage element”**. There is no mention of an **“data storage element”** in the original specification. Appropriate correction is required.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

a. Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-23 are rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter.

In regards to Claims 1-6 and 19-23

A § 101 process must (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing. If neither of these requirements is met by the claim, the method is not a patent eligible process under § 101 and should be rejected as being directed to nonstatutory subject matter.

As to claims 1-6 and 19-23, these claims recited purely mental steps. These claims lack the necessary physical articles or objects to constitute a machine or a manufacture within the meaning of 35 USC 101. As such, they fail to tie with a statutory category. Thus, to qualify as a § 101 statutory process, the claim should positively recite the other statutory class (the thing or product) to which it is tied, for example by identifying the apparatus that accomplishes the method steps, or positively recite the subject matter that is being transformed, for example by identifying the material that is being changed to a different state.

Applicant's network components according to Applicant (page 2, lines 8-10 of Applicant's specification, Para [0002] includes firewalls, proxy servers, intrusion detection system, routers and availability monitors). Examiner maintains that the networks components include software as noted in Specification, Para [0024] (i.e. network component output information utilizes the Simple Network Management Protocol (SNMP) and a Management Information Base (MIB). A MIB, provided by the manufacturer of the network component in the form of a flat file, describes the data that

can be extracted from the network component via SNMP and documents the syntax for extraction. Software MIB compilers are available for converting a MIB into a software application's internal form. This software application would then be capable, using SNMP, to extract data from the corresponding network component. A compiler which converts the MIB into a table update file appropriate for the meta-database can be programmed and is called an MIB integrator. Applying the MIB integrator to the MIB is called integrating the MB and results in a table update including attribute data, syntax, and identification of the type of network component to which it corresponds.). Examiner maintains the network component is software.

In regards to claims 7-18, (i.e. Applicant's system):

Claims 7-18 recite a "system" comprising a "a first network component..., a second network component a data parser".

The Examiner notes the disclosure of the present invention expressly states "the compilation system is Figure 1." see Specification -- Page 6).

The Examiner interprets all functions described herein may be performed in either hardware or software. Thus, for purposes of examination, the examiner interprets the recited "determining unit and the recited "system" to comprise only computer software.

Accordingly, the "system " recited in Claims 7-18 are software per se.

Examiner maintains that Applicant's system is as noted infra:

Applicant's network components according to Applicant (page 2, lines 8-10 of Applicant's specification, Para [0002] includes firewalls, proxy servers, intrusion detection system, routers and availability monitors). Examiner maintains that the networks components include software as noted in Specification, Para [0024] (*i.e. network component output information utilizes the Simple Network Management Protocol (SNMP) and a Management Information Base (MIB). A MIB, provided by the manufacturer of the network component in the form of a flat file, describes the data that can be extracted from the network component via SNMP and documents the syntax for extraction. Software MIB compilers are available for converting a MIB into a software application's internal form. This software application would then be capable, using SNMP, to extract data from the corresponding network component. A compiler which converts the MIB into a table update file appropriate for the meta-database can be programmed and is called an MIB integrator. Applying the MIB integrator to the MIB is called integrating the MB and results in a table update including attribute data, syntax, and identification of the type of network component to which it corresponds.*). Examiner maintains the network component is software.

Also, Applicant's routers are according to Applicant's specification:

Routers 22 analyze and direct information packets propagating between network components or to the Internet 24. Firewalls 30 can be included to control access into the network 10 and to control outside use of an Internet-available FTP server 26 and web server 28. A proxy server 32 can be provided in order to monitor internal requests for information from the Internet 24 and can be configured to block some of those requests based on various criteria. Each network ring 12 can also be coupled to security network components that perform intrusion detection 34, availability monitoring 36, utilization monitoring 38, and alerting 40. An availability monitoring component 36 can monitor the availability of the network, of a host, of an application, or of a combination of those. Utilization monitoring 38 can also apply to any or all of those three targets. The security of an information technology network encompasses the confidentiality, integrity, and availability of the software and data that it and its attached network components store, transfer, and process. Para [0021].

Examiner maintains that Applicant's system is software, according to Applicant's specification, *supra*. Therefore, Examiner maintains the rejection of Claims 1-23 under 35 USC 101.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact

terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 7-18 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicant's newly added claimed limitation, "a data storage element" is not described or mentioned in Applicant's instant application.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 7-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Examiner is unclear as to what Applicant means by the claimed, "a data storage element". What is a data storage element? Further clarification is required.

Allowable Subject Matter

Claims 1-26 would be allowable if rewritten or amended to overcome the rejections under 35 USC 112, 2nd paragraph and 101, set forth in this Office action for the reasons noted in the office action of April 14, 2011.

It is noted, *PATENTS ARE RELEVANT AS PRIOR ART FOR ALL THEY CONTAIN* "The use of patents as references is not limited to what the patentees describe as their own inventions or to the problems with which they are concerned. They are part of the literature of the art, relevant for all they contain." In re Heck, 699 F.2d 1331, 1332-33, 216 USPQ 1038, 1039 (Fed. Cir. 1983) (quoting In re Lemelson, 397 F.2d 1006, 1009, 158 USPQ 275, 277 (CCPA 1968)). A reference may be relied upon for all that it would have reasonably suggested to one having ordinary skill the art, including non-preferred embodiments (see MPEP 2123).

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Diane D. Mizrahi whose telephone number is 571-272-4079. The examiner can normally be reached on Monday-Thursday (8:30 - 4:30 p.m.).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nick Corsaro can be reached on (571) 272-7876. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 305-3900 for After Final communication.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-2600.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>.
Should you have questions on access to the Private PAIR system, contact the
Electronic Business Center (EBC) at 866-217-9197 (toll free).

/Diane Mizrahi/

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Primary Patent Examiner

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